

(10) an effective and coordinated method for ensuring cooperative and collective action in providing for and financing a nationwide program of generic promotion and consumer information is needed to ensure that the cut flowers and cut greens industry will be able to provide, obtain, and implement programs of promotion and consumer information necessary to maintain, expand, and develop markets for cut flowers and cut greens; and

(11) the most efficient method of financing such a nationwide program is to assess cut flowers and cut greens at the point at which the flowers and greens are sold by handlers into the retail market.

**(b) Policy and purpose**

It is the policy of Congress that it is in the public interest, and it is the purpose of this chapter, to authorize the establishment, through the exercise of the powers provided in this chapter, of an orderly procedure for the development and financing (through an adequate assessment on cut flowers and cut greens sold by handlers to retailers and related entities in the United States) of an effective and coordinated program of generic promotion, consumer information, and related research designed to strengthen the position of the cut flowers and cut greens industry in the marketplace and to maintain, develop, and expand markets for cut flowers and cut greens.

(Pub. L. 103-190, §2, Dec. 14, 1993, 107 Stat. 2266.)

SHORT TITLE

Section 1(a) of Pub. L. 103-190 provided that: "This Act [enacting this chapter] may be cited as the 'Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993'."

**§ 6802. Definitions**

As used in this chapter:

**(1) Consumer information**

The term "consumer information" means any action or program that provides information to consumers and other persons on appropriate uses under varied circumstances, and on the care and handling, of cut flowers or cut greens.

**(2) Cut flowers and cut greens**

**(A) In general**

**(i) Cut flowers**

The term "cut flowers" includes all flowers cut from growing plants that are used as fresh-cut flowers and that are produced under cover or in field operations.

**(ii) Cut greens**

The term "cut greens" includes all cultivated or noncultivated decorative foliage cut from growing plants that are used as fresh-cut decorative foliage (except Christmas trees) and that are produced under cover or in field operations.

**(iii) Exclusions**

The terms "cut flowers" and "cut greens" do not include a foliage plant, floral supply, or flowering plant.

**(B) Substantial portion**

In any case in which a handler packages cut flowers or cut greens with hard goods in

an article (such as a gift basket or similar presentation) for sale to a retailer, the PromoFlor Council may determine, under procedures specified in the order, that the cut flowers or cut greens in the article do not constitute a substantial portion of the value of the article and that, based on the determination, the article shall not be treated as an article of cut flowers or cut greens subject to assessment under the order.

**(3) Gross sales price**

The term "gross sales price" means the total amount of the transaction in a sale of cut flowers or cut greens from a handler to a retailer or exempt handler.

**(4) Handler**

**(A) Qualified handler**

**(i) In general**

The term "qualified handler" means a person (including a cooperative) operating in the cut flowers or cut greens marketing system—

(I) that sells domestic or imported cut flowers or cut greens to retailers and exempt handlers; and

(II) whose annual sales of cut flowers and cut greens to retailers and exempt handlers are \$750,000 or more.

**(ii) Inclusions and exclusions**

**(I) In general**

The term "qualified handler" includes—

(aa) bouquet manufacturers (subject to paragraph (2)(B));

(bb) an auction house that clears the sale of cut flowers and cut greens to retailers and exempt handlers through a central clearinghouse; and

(cc) a distribution center that is owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales.

**(II) Transfers**

For the purpose of determining sales of cut flowers and cut greens to a retailer from a distribution center described in subclause (I)(cc), each non-sale transfer to a retailer shall be treated as a sale in an amount calculated as provided in subparagraph (C).

**(III) Transportation or delivery**

The term "qualified handler" does not include a person who only physically transports or delivers cut flowers or cut greens.

**(iii) Construction**

**(I) In general**

The term "qualified handler" includes an importer or producer that sells cut flowers or cut greens that the importer or producer has imported into the United States or produced, respectively, directly to consumers and whose sales of the cut flowers and cut greens (as calculated under subparagraph (C)), together with sales of cut flowers and cut

greens to retailers or exempt handlers, annually are \$750,000 or more.

**(II) Sales**

Each direct sale to a consumer by a qualified handler described in subclause (I) shall be treated as a sale to a retailer or exempt handler in an amount calculated as provided in subparagraph (C).

**(III) Definitions**

As used in this paragraph:

**(aa) Importer**

The term “importer” has the meaning provided in section 6804(b)(2)(B)(i)(I) of this title.

**(bb) Producer**

The term “producer” has the meaning provided in section 6804(b)(2)(B)(ii)(I) of this title.

**(B) Exempt handler**

The term “exempt handler” means a person who would otherwise be considered to be a qualified handler, except that the annual sales by the person of cut flowers and cut greens to retailers and other exempt handlers are less than \$750,000.

**(C) Annual sales determined**

**(i) In general**

Except as provided in clause (ii), for the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraphs (A) and (B), the amount of a sale shall be determined on the basis of the gross sales price of the cut flowers and cut greens sold.

**(ii) Transfers**

**(I) Non-sale transfers and direct sales by importers**

Subject to subclause (III), in the case of a non-sale transfer of cut flowers or cut greens from a distribution center (as described in subparagraph (A)(ii)(II)), or a direct sale to a consumer by an importer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to the sum of—

(aa) the price paid by the distribution center or importer, respectively, to acquire the cut flowers or cut greens; and

(bb) an amount determined by multiplying the acquisition price referred to in item (aa) by a uniform percentage established by an order to represent the mark-up of a wholesale handler on a sale to a retailer.

**(II) Direct sales by producers**

Subject to subclause (III), in the case of a direct sale to a consumer by a producer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform percentage established by an order to represent the cost of producing the article and the mark-up of a wholesale handler on a sale to a retailer.

**(III) Changes in uniform percentages**

Any change in a uniform percentage referred to in subclause (I) or (II) may become effective after—

(aa) recommendation by the PromoFlor Council; and

(bb) approval by the Secretary after public notice and opportunity for comment in accordance with section 553 of title 5 and without regard to sections 556 and 557 of such title.

**(5) Order**

The term “order” means an order issued under this chapter (other than sections 6808, 6809, and 6811 of this title).

**(6) Person**

The term “person” means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or other legal entity.

**(7) PromoFlor Council**

The term “PromoFlor Council” means the Fresh Cut Flowers and Fresh Cut Greens Promotion Council established under section 6804(b) of this title.

**(8) Promotion**

The term “promotion” means any action determined by the Secretary to advance the image, desirability, or marketability of cut flowers or cut greens, including paid advertising.

**(9) Research**

The term “research” means market research and studies limited to the support of advertising, market development, and other promotion efforts and consumer information efforts relating to cut flowers or cut greens, including educational activities.

**(10) Retailer**

**(A) In general**

The term “retailer” means a person (such as a retail florist, supermarket, mass market retail outlet, or other end-use seller), as described in an order, that sells cut flowers or cut greens to consumers, and a distribution center described in subparagraph (B)(i).

**(B) Distribution centers**

**(i) In general**

The term “retailer” includes a distribution center that is—

(I) owned or controlled by a person described in subparagraph (A), or owned or controlled cooperatively by a group of the persons, if the predominant retail business activity of the person is not floral sales; or

(II) independently owned but operated primarily to provide food products to retail stores.

**(ii) Importers and producers**

An independently owned distribution center described in clause (i)(II) that also is an importer or producer of cut flowers or cut greens shall be subject to the rules of construction specified in paragraph

(4)(A)(iii) and, for the purpose of the rules of construction, be considered to be the seller of the articles directly to the consumer.

**(11) Secretary**

The term “Secretary” means the Secretary of Agriculture.

**(12) State**

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified).

**(13) United States**

The term “United States” means the States collectively.

(Pub. L. 103–190, § 3, Dec. 14, 1993, 107 Stat. 2268.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with the Republic of Palau, referred to in par. (12), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

**§ 6803. Issuance of orders**

**(a) In general**

**(1) Issuance**

To effectuate the policy of this chapter specified in section 6801(b) of this title, the Secretary, subject to the procedures provided in subsection (b) of this section, shall issue orders under this chapter applicable to qualified handlers of cut flowers and cut greens.

**(2) Scope**

Any order shall be national in scope.

**(3) One order**

Not more than 1 order shall be in effect at any 1 time.

**(b) Procedures**

**(1) Proposal for an order**

**(A) Secretary**

The Secretary may propose the issuance of an order.

**(B) Other persons**

An industry group that represents a substantial number of the industry members who are to be assessed under the order, or any other person who will be affected by this chapter, may request the issuance of, and submit a proposal for, an order.

**(2) Publication of proposal**

The Secretary shall publish a proposed order and give notice and opportunity for public comment on the proposed order not later than 60 days after the earlier of—

(A) the date on which the Secretary proposes an order, as provided in paragraph (1)(A); and

(B) the date of the receipt by the Secretary of a proposal for an order, as provided in paragraph (1)(B).

**(3) Issuance of order**

**(A) In general**

After notice and opportunity for public comment are provided in accordance with paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with this chapter.

**(B) Effective date**

The order shall be issued and become effective not later than 180 days after publication of the proposed order.

**(c) Amendments**

The Secretary, from time to time, may amend an order. The provisions of this chapter applicable to an order shall be applicable to any amendment to an order.

(Pub. L. 103–190, § 4, Dec. 14, 1993, 107 Stat. 2271.)

**§ 6804. Required terms in orders**

**(a) In general**

An order shall contain the terms and provisions specified in this section.

**(b) PromoFlor Council**

**(1) Establishment and membership**

**(A) Establishment**

The order shall provide for the establishment of a Fresh Cut Flowers and Fresh Cut Greens Promotion Council, consisting of 25 members, to administer the order.

**(B) Membership**

**(i) Appointment**

The order shall provide that members of the PromoFlor Council shall be appointed by the Secretary from nominations submitted as provided in paragraphs (2) and (3).

**(ii) Composition**

The PromoFlor Council shall consist of—

(I) participating qualified handlers representing qualified wholesale handlers and producers and importers that are qualified handlers;

(II) representatives of traditional retailers; and

(III) representatives of persons who produce fresh cut flowers and fresh cut greens.

**(2) Distribution of appointments**

**(A) In general**

The order shall provide that the membership of the PromoFlor Council shall consist of—

(i) 14 members representing qualified wholesale handlers of domestic or imported cut flowers and cut greens;

(ii) 3 members representing producers that are qualified handlers of cut flowers and cut greens;